THE HON'BLE SRI JUSTICE C.Y. SOMAYAJULU

WRIT PETITION NO.22304 of 1996

Dated 26-09-2005

Between:

L. Nageswara Rao. ….Petitioner

and

The Special Deputy Tahsildar, Rampachodavaram,

and six others.

….Respondents

THE HON'BLE SRI JUSTICE C.Y. SOMAYAJULU

WRIT PETITION NO.22304 of 1996

ORDER:

This writ petition is filed questioning the order dated 11-09-1996 passed by the Sub-Divisional Magistrate, Mobile Court, Rampachodavaram(second respondent) under the provisions of the Andhra Pradesh Scheduled Area Land Transfer Regulation 1 of 1959 (the Regulations) in LTRP.No.13 of 1996.

The main contention of the learned counsel for the petitioner is that the petitioner was served with a notice in LTRP.No.13 of 1996 on 11-08-1996 asking him to appear on 13-08-1996 before the second respondent and when the petitioner requested for time, second respondent at the instance of the Collector, Kakinada, (third respondent), without granting any further time, passed the order impugned and so the order impugned is liable to be set aside as violative of principles of natural justice and being violative of Rule 7 of the Andhra Pradesh Scheduled Areas and Land Transfer Rules, 1969 (hereinafter referred to as 'Rules'). It is also his contention that the petitioner did not avail the remedy of appeal because the Collector was physically present in the office of the second respondent and is interested in dispossessing the petitioner. It is his further contention that the order impugned is clearly contrary to the Regulations, because the notice issued is to show cause as to why the petitioner should not be ejected from the land, but the order reads as if the petitioner is not in possession of the land and that tribals are in possession, and if petitioner is not in possession and tribals are in possession of the land, question of second respondent assuming jurisdiction under the Regulations does not arise.

In the counter-affidavit filed on behalf of the respondents 1 to 4, it is alleged that though reasonable notice was given to the petitioner he did not make either a oral or written request for an opportunity to represent his case, and as he was in a hurry to occupy the lands of the tribals by using force, the order impugned was passed, since the findings in O.S.No.61 of 1967 on the file of the District Court, Rajahmundry, and in A.S.No.236 of 1973 on the file of this Court

show that tribals are in possession of the disputed land.

Though this Court usually would not interfere with the order impugned, since the petitioner failed to avail the remedy of appeal available to him under the Rules, and even without going into the merit of the contention that first respondent passed the order impugned at the instance of the third respondent, I am interfering with the order impugned because there is *ex facie* violation of principles of natural justice, and Rule 7 of the Rules because notice in Form No. B produced by the petitioner shows that he was directed to appear on 13-08-1996 though the said notice was signed by the authority on 09-08-1996, and the order impugned, shows that the case was heard on 13-08-1996 itself, when as per Rule 7 of the Rules, minimum fifteen days notice between date of service of notice and date of hearing is mandatory. This apart, I find force in the contention of the learned counsel for the petitioner that the Tribunal under the Regulations can have jurisdiction only when a non-tribal is in possession of land in a Tribal area, but not when a Tribal is in possession there.

In these circumstances, Rule Nisi is made absolute, writ petition is allowed with costs and the order impugned dated 11-09-1996 in LTRP.No.1 of 1996 is set aside and the case is remitted to the Tribunal for fresh disposal. Petitioner shall file his reply (written statement/counter) in the case within a period of six weeks from today and thereafter the Tribunal shall hear and dispose of the case as per law after affording due opportunity to adduce evidence to the parties.

(C.Y. SOMAYAJULU, J)

Date:26-09-2005

ghn